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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 37

ZELLERBACH PAPER COMPANY, A CORPORATION, petitioner

v.

GUY T. HELVERING, AS COMMISSIONER OF INTERNAL REVENUE

No. 38

ZELLERBACH PAPER COMPANY, A CORPORATION, AS Transferee of A. S. Hopkins Company, petitioner

v.

GUY T. HELVERING, AS COMMISSIONER OF INTERNAL REVENUE

No. 39

NATIONAL PAPER PRODUCTS COMPANY, A CORPORATION, petitioner

v.

GUY T. HELVERING, AS COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

OPINIONS BELOW

The opinion of the Board of Tax Appeals [1] is reported in 26 B. T. A. 96. The opinion of the Circuit Court of Appeals [2] is reported in 69 F. (2d) 852.

JURISDICTION

The judgments of the Circuit Court of Appeals [3] were entered February 28, 1934. A joint petition for writs of certiorari was filed May 10, 1934, and granted June 4, 1934.[4] The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a tax return filed under the Revenue Act of 1918, prior to the enactment of the Revenue Act of 1921, started the running of the statute of limitations for taxes assessable retroactively under the Revenue Act of 1921.

2. Whether in any event the petitioners' returns were so incomplete and misleading as not to start the running of the statute of limitations.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in Appendix A, *infra*, p. 16.

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[1] No. 37, R. 89–91; No. 38, R. 56–58; No. 39, R. 58–60.
[2] No. 37, R. 125–141; No. 38, R. 93; No. 39, R. 93.
[3] No. 37, R. 142; No. 38, R. 94; No. 39, R. 94.
[4] No. 37, R. 146; No. 38, R. 97; No. 39, R. 97.

These three cases relate to the taxes of affiliated corporations. The parties have stipulated the correctness of the deficiency in each case, leaving merely the question as to whether the assessment and collection of the deficiencies have been barred by the statute of limitations. All three cases were disposed of in one opinion both by the Board of Tax Appeals and the Circiut Court of Appeals.[5]

Under the Revenue Act of 1918, the Zellerbach Paper Company (petitioner in No. 37) filed on July 16, 1921, a consolidated income tax return for the fiscal year ending April 30, 1921, on behalf of itself and its subsidiaries, National Paper Products Company (petitioner in No. 39) and Sanitary Paper Products Company. The return disclosed net income in excess of $500,000 for the Zellerbach Company, and in excess of $200,000 for the National Paper Products Company.

During the period from November 1, 1920, to April 30, 1921, A. S. Hopkins Company (petitioner in No. 38) was affiliated with Zellerbach Paper Company, National Paper Products Company, and Sanitary Products Corporation within the provisions of Section 240 of the Revenue Acts of 1918 and 1921. (No. 38, R. 52.) On March 15, 1921, the Zellerbach Company designated itself as successor to the Hopkins Company and filed a return in the name of the latter for the full calendar year 1920.

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[5] See footnotes 1 and 2, *supra*. The records have been separately printed.

(No. 38, R. 53.) The Zellerbach Company itself and its other two affiliates, the National Paper Products Company and the Sanitary Products Corporation, kept their books on the basis of the fiscal year ending April 30. (No. 38, R. 53.) In the consolidated return filed by the Zellerbach Company and these two affiliates for the fiscal year ending April 30, 1921, the income of the Hopkins Company for the first four months of 1921 was included as part of the income of the Zellerbach Company. (*Ibid.*)

After the enactment of the Revenue Act of 1921, no other return was filed by any of the petitioners for the fiscal year ending April 30, 1921. On May 11, 1929, a notice of deficiency in the sum of $69,114.02 was mailed to the Zellerbach Paper Company (No. 37, R. 82); a notice of deficiency in the sum of $1,744.37 covering the period from November 1, 1920, to April 30, 1921, was mailed to the Zellerbach Company, as transferee of the Hopkins Company (No. 38, R. 52, 54); and a notice of deficiency of $32,990.18 was mailed to the National Paper Products Company. (No. 39, R. 53.)

In each of these cases, the Board of Tax Appeals held that the returns by petitioners filed under the Revenue Act of 1918 did not start the running of the statute of limitations.[6] The Circuit Court of Appeals affirmed the decision.[7]

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[6] No. 37, R. 89–91; No. 38, R. 56–58; No. 39, R. 58–60.

[7] No. 37, R. 125–141; No. 38, R. 93; No. 39, R. 93.

1. The Revenue Act of 1921, upon its enactment, became the only revenue statute applicable to the taxes in question. A four-year period of limitations is applicable to taxes imposed by the Act. To start the running of this period, a return under the 1921 Act was required to be filed. The only return filed by petitioners was under the 1918 Act. The 1921 Act was different in many respects from the 1918 Act, and the liability thereunder was changed. Congress clearly did not intend to adopt for the 1921 Act the returns filed under the earlier statute. Accordingly, the statute of limitations did not start running and deficiencies could be assessed and collected at any time.

2. Even assuming that a return filed under the 1918 Act might serve the function of a return under the 1921 Act, nevertheless the return filed by these petitioners was so incomplete and misleading as not to start the running of the statute of limitations. The return failed to answer certain questions and contained a misleading answer to another question. Moreover, it did not show in any way that one of the affiliated group was included in the return and made no segregation of the information respecting that affiliate. It thus did not contain sufficient information upon which the Commissioner could assess the tax. Accordingly, the return was not of such a character as to be sufficient to start the period of limitations.

I

THE REVENUE ACT OF 1921 WAS THE ONLY STATUTE APPLICABLE TO THE TAXES OF THE PETITIONERS, AND SINCE THEY DID NOT FILE A RETURN UNDER THAT ACT DEFICIENCIES AGAINST THEM COULD BE ASSESSED AT ANY TIME

Upon the enactment of the Revenue Act of 1921 it became the only revenue statute applicable to petitioners' fiscal year ending April 30, 1921. The Revenue Act of 1921 was approved November 23, 1921, to "take effect as of January 1, 1921." (Sec. 263, *infra,* p. 18.) Under Section 230 of this Act (*infra,* p. 17) corporations were taxed for "each taxable year." The "taxable year" was defined as a calendar year, or a fiscal year ending during such calendar year; and the first taxable year, "to be called the taxable year 1921", was defined as the calendar year 1921 "or any fiscal year ending during the calendar year 1921." (Sec. 200, *infra,* p. 16.) Thus, the fiscal year ending April 30, 1921, was, under the express definition of the statute, "the first taxable year" thereunder for petitioners. This period was governed exclusively by the Act of 1921, since the same statute repealed "as of January 1, 1921" that portion of the Revenue Act of 1918 applicable to the taxes here in question. (Sec. 1400, *infra,* p. 18.)

A four-year period of limitations is applicable to "taxes imposed by the Revenue Act of 1921

* * * for the taxable year 1921." (Revenue Act of 1926, Sec. 277a (2), *infra*, p. 19.) To start the running of this period of limitation, a return under the 1921 Act was required to be filed. (Sec. 278 (a), Revenue Act of 1926, *infra*, p. 20.) This Act provided that every corporation subject to taxation thereunder should "make a return, stating specifically the items of its gross income and the deductions and credits allowed *by this title.*" (Sec. 239 (a), *infra*, p. 17; italics supplied.)

A return was filed under the 1918 Act covering the period in question. But the applicable provisions of the 1918 Act were repealed as of January 1, 1921, and the tax liability under the 1918 Act, for which the return was made, was wiped out. A different liability thereupon arose under a new and different statute which specifically required the filing of a return. And in using the word "return" in the 1921 Act, Congress clearly required information to be supplied in a prescribed manner responsive to the 1921 Act and not to the earlier Act. In *Florsheim Bros. Co.* v. *United States*, 280 U. S. 453, 460, this Court stated:

> * * * in providing that the period of limitation should begin on the date when the return was filed, rather than when it was due, the statute plainly manifested a purpose that *the period was to commence only when the taxpayer had supplied this information in the prescribed manner.* (Italics supplied.)

Congress must have been cognizant of the fact that some returns had already been filed under the 1918 Act when it enacted a new and retroactive statute. Had it intended to adopt for the 1921 Act the returns filed under the earlier statute, it would have been a simple matter so to provide.

Moreover, the 1921 Act was different in many respects from the 1918 Act, and the liability thereunder was changed. It so happens that the only change particularly applicable to the petitioners is the elimination of a $2,000 credit. But the fact that the change is slight as to these taxpayers cannot relieve the petitioners from the requirement that returns be filed under, and responsive to, the 1921 Act. As the court below stated (No. 37, R. 136):

> * * * the Revenue Act of 1921 changed the method of determining the gross income and the proper deductions therefrom and therefore changed the method of determining the net income. Consequently, in order that the taxpayer's return should show the gross income and the deductions therefrom according to the Revenue Act of 1921 it was essential that the taxpayer should state the same according to the method laid down in the new act. This was the return required by the act.

If petitioners are correct in their contention that the period of limitations under the 1921 Act is started by the filing of a return under the 1918 Act, then it follows that the limitation provided for in

the 1921 Act would be unequal in operation. As to returns filed subsequent to the enactment of the law, it would be effective only upon the expiration of four years, whereas to others it would constitute a bar within a shorter period, dependent upon the length of time the "return" was made before the enactment of the law.

Petitioners' contention that the period under the 1921 Act began to run upon the filing of its return under the 1918 Act must necessarily proceed upon the assumption that a limitation may operate against a liability before the liability itself has arisen or is even ascertainable. Before the 1921 statute was enacted, the Government could take no steps with respect to taxes payable thereunder. As this Court stated in *Borer* v. *Chapman,* 119 U. S. 587, 602:

> It cannot be that the statute of limitations will be allowed to commence to run against a right until that right has accrued in a shape to be effectually enforced.

It is immaterial that the Commissioner could have secured the needed information from the return filed under the 1918 Act. Petitioners were under a duty to file a return under the 1921 Act. The possibility that the Commissioner could have obtained sufficient information elsewhere would not relieve petitioners of their duty. See *Florsheim Bros. Co.* v. *United States, supra,* at p. 461. In *Lucas* v. *Pilliod Lumber Co.,* 281 U. S. 245, it was held that a formal return which contained all

the necessary information and lacked only the signatures of the officers of the corporation was not a sufficient compliance with the statute.

It is true that, although the 1921 Act required a return from every corporation taxable thereunder, the Treasury Department decided to press that requirement only where the tax liability under the 1921 Act would be greater than under the 1918 Act.[8] But even under these liberal administrative rulings, petitioners should have filed an additional return, since the 1921 Act eliminated a $2,000 credit thereby increasing the aggregate tax liability.

The Board of Tax Appeals has repeatedly sustained the position taken by the Commissioner in the instant cases.[9] This view has also been fol-

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[8] T. D. 3305, I–1 Cumulative Bulletin 247; T. D. 3310, I–1 Cumulative Bulletin 248. See also Sol. Op. 138, I–1 Cumulative Bulletin 174; S. M. 3021, IV–1 Cumulative Bulletin 72. Similar rulings were made in connection with the transition from the 1917 Act to the 1918 Act. T. D. 2797, 21 T. D. 45; O. D. 71, 1 Cumulative Bulletin 234; I. T. 1875, II–2 Cumulative Bulletin 238, 243.

[9] *Appeal of Davis Feed Co.*, 2 B. T. A. 616; *John Wanamaker Philadelphia* v. *Commissioner*, 8 B. T. A. 864; *C. A. Lawton Co.* v. *Commissioner*, 13 B. T. A. 8; *Hutchinson Co.* v. *Commissioner*, 14 B. T. A. 367; *Valentine-Clark Co.* v. *Commissioner*, 14 B. T. A. 562, reversed, 52 F. (2d) 346 (C. C. A. 8th); *A. Cellers et al.* v. *Commissioner*, 16 B. T. A. 411; *Gus Holstine Dry Goods Co.* v. *Commissioner*, 16 B. T. A. 1124; *Isaac Goldmann Co.* v. *Commissioner*, 17 B. T. A. 1103, reversed, 51 F. (2d) 427 (App. D. C.); *Myles Salt Co.*,

lowed in several cases involving the transition from the 1917 Act to the 1918 Act.[10] Three appellate courts, however, have reached the opposite conclusion,[11] but it is submitted that these cases were incorrectly decided.

Ltd., v. *Commissioner*, 18 B. T. A. 742, reversed, 49 F. (2d) 232 (C. C. A. 5th); *Adams, Cushing & Foster, Inc.* v. *Commissioner*, 19 B. T. A. 89; *G. Corrado Coal & Coke Interests, Inc.* v. *Commissioner*, 19 B. T. A. 691; *Hill Goldwater* v. *Commissioner*, 21 B. T. A. 73; *E. J. Lorie* v. *Commissioner*, 21 B. T. A. 612.

It is true that among the earlier cases before the Board there was considerable confusion, and some of them were decided the other way. See *Fred T. Ley & Co., Inc.* v. *Commissioner*, 9 B. T. A. 749; *M. Brown & Co.* v. *Commissioner*, 9 B. T. A. 753; *Keystone Coal & Mining Co.* v. *Commissioner*, 10 B. T. A. 295; *Palmetto Coal Co.* v. *Commissioner*, 11 B. T. A. 154; *Farmers Elevator Co.* v. *Commissioner*, 13 B. T. A. 1079; *Denholm & McKay Co.* v. *Commissioner*, 15 B. T. A. 225.

[10] *Globe Excelsior Oak Tanning Co.* v. *United States*, 2 F. Supp. 470 (C. Cls.), certiorari denied, 290 U. S. 627; *Clifton Mfg. Co.* v. *United States*, 3 F. Supp. 508 (W. D. S. C.), affirmed, 70 F. (2d) 102 (C. C. A. 4th); *Ralston Purina Co.* v. *United States*, 58 F. (2d) 1065 (C. Cls.), certiorari denied, 289 U. S. 732. Compare *Updike* v. *United States*, 8 F. (2d) 913 (C. C. A. 8th) (transition from 1916 Act to 1917 Act), certiorari denied, 271 U. S. 661; *United States* v. *Updike*, 32 F. (2d) 1 (C. C. A. 8th) (transition from 1916 Act to 1917 Act), affirmed, 281 U. S. 489; *Whitney Bodden Shipping Co.* v. *United States*, 52 F. (2d) 1003 (C. Cls.).

[11] *Myles Salt Co.* v. *Commissioner*, 49 F. (2d) 232 (C. C. A. 5th); *Isaac Goldmann Co.* v. *Burnett*, 51 F. (2d) 427 (App. D. C.); *Valentine-Clark Co.* v. *Commissioner*, 52 F. (2d) 346 (C. C. A. 8th).

II

THE RETURNS FILED WERE SO INCOMPLETE AND MISLEADING THAT THEY WERE INSUFFICIENT TO START THE RUNNING OF THE STATUTE OF LIMITATIONS

Even assuming that a return filed under the 1918 Act may serve the function of a return under the 1921 Act, nevertheless the returns filed by these petitioners were so incomplete and misleading as not to start the running of the statute of limitations.

The A. S. Hopkins Company was affiliated with the Zellerbach Paper Company, the National Paper Products Company, and the Sanitary Products Corporation during the period from November 1, 1920, to April 30, 1921. (No. 38, R. 52.) Until December 31, 1920, the Hopkins Company kept its own books and records, but thereafter it maintained no separate books and its operations were mingled with those of the Zellerbach Company. (No. 38, R. 54.)

On March 15, 1921, the Zellerbach Company designated itself the successor of the Hopkins Company, and filed a return in the name of that company for the full calendar year 1920. (No. 38, R. 53.) The income of the Hopkins Company for the first four months of 1921 was included as part of the income of the Zellerbach Company in the return filed July 16, 1921, for the fiscal year ending April 30, 1921, by the Zellerbach Company and its two other affiliates. (No. 38, R. 53.)

In the return for the Hopkins Company for 1920 it was stated on page three thereof, in answer to question twelve, that (No. 38, R. 55):

> The entire capital stock of this Corporation has been bought by the Zellerbach Paper Co. and its entire net assets transferred as of December 31, 1920.

The affirmative answer to this question required an answer to question fourteen (Appendix B, *infra*), which called for a considerable amount of additional information. An answer to this question should have shown how the situation was changed during the year 1920. Such information was specifically required by question fourteen in accordance with Article 634 of Regulation 45 (Appendix A, *infra*), yet the question remained completely unanswered.

Furthermore, the return filed on July 16, 1921, by the Zellerbach Company and its two other affiliates gave no indication that the Hopkins Company was one of the affiliated group for which the return was made. There was no answer to the question, "Is this a consolidated return?" and at the head of the return there appeared only the following names: Zellerbach Paper Company, National Paper Products Company, Sanitary Products Corporation. (No. 38, R. 55.)

Questions eleven, twelve, and thirteen (Appendix C, *infra*) which would have required certain important information as to the relationship between the

Zellerbach Company and the Hopkins Cmpany were not answered. An affirmative answer was given to the following part of question fourteen (No. 38, R. 55): "Did substantially the same conditions as are set out in the questionnaire filed for 1919 or prior years, obtain during the entire taxable period 1920?" This statement was entirely wrong and therefore misleading.

Although schedules were attached to the return giving information and figures pertaining to each of the other three companies, no separate information or figures were furnished regarding the Hopkins Company, and the return did not in any way show that the Hopkins Company was one of the affiliated group, nor that its income was included in the return.

It is thus evident that the returns were in important particulars incomplete and misleading. It is submitted that such a return does not start the running of the statute of limitations. *Lucas* v. *Colmer-Green Lumber Co.*, 49 F. (2d) 234 (C. C. A. 5th); *United States* v. *National Tank & Export Co.*, 45 F. (2d) 1005 (C. C. A. 5th), certiorari denied, 283 U. S. 839; *Cem Securities Corp.* v. *Commissioner*, (C. C. A. 4th), decided June 29, 1934, not officially reported, but found in 1934 Prentice-Hall Federal Tax Service, par. 1493. These cases held that a return which failed to segregate information respecting affiliated corporations was not sufficient to start the running of the statute of limitations.

A contrary result was reached in the case of *Commissioner* v. *Stetson & Ellison Co.*, 43 F. (2d) 553 (C. C. A. 3d). The instant case presents even stronger considerations for holding that the return was not sufficient to start the period of limitations, and is distinguishable from the *Stetson & Ellison* case in that unlike the situation involved in all of these cases, no information was given here to show that the return for the Zellerbach Company and its other affiliates was a return for the Hopkins Company as well. In the *Stetson & Ellison* case, *supra,* the court, in determining that the return was sufficient to start the running of the statute of limitations, pointed out (page 554) that "the names of all the companies included in the consolidation were made clear to the Commissioner."

CONCLUSION

It is respectfully submitted that the judgments of the Circuit Court of Appeals should be affirmed.

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OCTOBER 1934.

APPENDIX A

Revenue Act of 1921, c. 136, 42 Stat. 227:

SEC. 200. That when used in this title—(1) The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 or section 232. The term "fiscal year" means an accounting period of twelve months ending on the last day of any month other than December. The first taxable year, to be called the taxable year 1921, shall be the calendar year 1921 or any fiscal year ending during the calendar year 1921; * * *

* * * * *

SEC. 205. (a) That if a taxpayer makes return for a fiscal year beginning in 1920 and ending in 1921, his tax under this title for the taxable year 1921 shall be the sum of: (1) the same proportion of a tax for the entire period computed under Title II of the Revenue Act of 1918 at the rates for the calendar year 1920 which the portion of such period falling within the calendar year 1920 is of the entire period, and (2) the same proportion of a tax for the entire period computed under this title at the rates for the calendar year 1921, which the portion of such period falling within the calendar year 1921 is of the entire period. * * *

SEC. 227. (a) That returns (except in the case of nonresident aliens) shall be made

on or before the fifteenth day of the third month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the 15th day of March. * * *

SEC. 230. That, in lieu of the tax imposed by section 230 of the Revenue Act of 1918, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation a tax at the following rates:

(a) For the calendar year 1921, 10 per centum of the amount of the net income in excess of the credits provided in section 236; and

(b) For each calendar year thereafter, 12½ per centum of such excess amount.

* * * * *

SEC. 236. That for the purpose only of the tax imposed by section 230 there shall be allowed the following credits:

* * * * *

(b) In the case of a domestic corporation the net income of which is $25,000 or less, a specific credit of $2,000; but if the net income is more than $25,000 the tax imposed by section 230 shall not exceed the tax which would be payable if the $2,000 credit were allowed, plus the amount of the net income in excess of $25,000; * * *

SEC. 239. (a) That every corporation subject to taxation under this title * * * shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title * * *.

SEC. 250. (d) The amount of income, excess-profits, or war-profits taxes due under any return made under this Act for the taxable year 1921 or succeeding taxable years shall be determined and assessed by the Commissioner within four years after the return

was filed, and the amount of any such taxes due under any return made under this Act for prior taxable years or under prior income, excess-profits, or war-profits tax Acts, or under section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, shall be determined and assessed within five years after the return was filed, unless both the Commissioner and the taxpayer consent in writing to a later determination, assessment, and collection of the tax; and no suit or proceeding for the collection of any such taxes due under this Act or under prior income, excess-profits, or war-profits tax Acts, or of any taxes due under section 38 of such Act of August 5, 1909, shall be begun, after the expiration of five years after the date when such return was filed, but this shall not affect suits or proceedings begun at the time of the passage of this Act: * * *.

SEC. 263. That this title shall take effect as of January 1, 1921.

SEC. 1303. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

(U. S. C., Title 26, Sec. 1245.)

* * * * *

SEC. 1400. (a) That the following parts of the Revenue Act of 1918 are repealed, to take effect (except as otherwise provided in this Act) on January 1, 1922, subject to the limitations provided in subdivision (b):

Title II (called "Income Tax") as of January 1, 1921;

* * * * *

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 274. (a) If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within 60 days after such notice is mailed * * * the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 279, 282, or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 60-day period, nor, if the petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

* * * * *

(U. S. C. App., Title 26, Sec. 1048.)

SEC. 277. (a) Except as provided in section 278—

* * * * *

(2) The amount of income, excess-profits and war-profits taxes imposed by the Revenue Act of 1921, and by such Act as amended, for the taxable year 1921 and succeeding taxable years, and the amount of income taxes imposed by the Revenue Act of 1924, shall be assessed within four years after the re-

turn was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

* * * * *

(b) The running of the statute of limitations provided in this section or in section 278 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 274) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter.

(U. S. C. App., Title 26, Sec. 1057.)

SEC. 278. (a) In the case of a false or fraudulent return with the intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

* * * * *

(d) Where the assessment of any income, excess-profits, or war-profits tax imposed by this title or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

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(U. S. C. App., Title 26, Secs. 1058 and 1061.)

Treasury Department Regulations 45 (1920 ed.), promulgated January 28, 1921:

> ART. 631. *Affiliated corporations.* — The provision of the statute requiring affiliated corporations to file consolidated returns is based upon the principle of levying the tax according to the true net income and invested capital of a single business enterprise, even though the business is operated through more than one corporation. * * *
>
> ART. 632. *Consolidated returns.* — Affiliated corporations, as defined in the statute and in article 633, are required to file consolidated returns on form 1120. The consolidated return shall be filed by the parent or principal reporting corporation in the office of the collector of the district in which it has its principal office. Each of the other affiliated corporations shall file in the office of the collector of its district form 1122, along with the several schedules indicated thereon. The parent or principal corporation filing a consolidated return shall include in such return a statement specifically setting forth (a) the name and address of each of the subsidiary or affiliated corporations included in such return, (b) the par value of the total outstanding capital stock of each of such corporations at the beginning of the taxable year, (c) the par value of such capital stock held by the parent corporation or by the same interests at the beginning of the taxable year, (d) in the case of affiliated corporations, the stock of which is owned or controlled by the same interests, a list of the individuals or partnerships constituting such interests, with the per-

centage of the total outstanding stock of each affiliated corporation held by each of such individuals or partnerships during all of the taxable year, and (e) a schedule showing the proportionate amount of the total tax which it is agreed among them is to be assessed upon each affiliated corporation. * * *

ART. 633. *When corporations are affiliated.*—Corporations will be deemed to be affiliated (a) when one domestic corporation owns directly or controls through closely affiliated interests or by a nominee or nominees substantially all the stock of the other or others, or (b) when substantially all the stock of two or more domestic corporations is owned or controlled by the same interests. * * *

ART. 634. *Change in ownership during taxable year.*—When one corporation owns or controls substantially all the stock of another corporation at the beginning of any taxable year, but during the taxable year sells or parts with the control of all or a majority of such stock to outside interests not affiliated with it, or when one corporation during any taxable year acquires the ownership or control of substantially all the capital stock of another corporation with which it was not previously affiliated, a full disclosure of the circumstances of such changes in ownership shall be submitted to the Commissioner. In accordance with the peculiar circumstances in each case the Commissioner may require separate or consolidated returns to be filed, to the end that the tax may be equitably assessed.

APPENDIX B

Form 1120, Corporation Income and Profits Tax Return for Calendar Year 1920 (p. 3):

Affiliations with other corporations (to be answered by every corporation).

* * * * *

14. If the answer to questions 11, 12, and 13, or to any of them, is " yes ", answer the following:

(a) Did the corporation file Affiliated Corporations Questionnaire, Form 819, for 1917 or subsequent taxable years? Answer "Yes" or "No." ------. If the answer to this question is "yes", a questionnaire is not required, except under the circumstances described in question (b). If the answer to this question is "no", and the answer to questions 11, 12, and 13, or to any of them, is "yes", procure from the Collector of Internal Revenue for your district Form 819, which shall be filled out and filed as a part of this return. If the answer to this question is "no", question (b) need not be answered.

(b) Did substantially the same conditions, as are set out in the questionnaire filed for 1919 or prior years, obtain during the entire taxable period 1920? Answer "Yes" or "No." ------. If the answer to this question is "no", a statement setting forth the particulars in which the situation has changed, should be attached to and made a part of this return. If there have been substantial changes in stockholdings, a complete

schedule of such changes should be submitted in the form prescribed in tables 3 and 6 of the questionnaire. If there are companies other than those covered by the questionnaire for 1919 or prior years which, applying the tests contained in questions 11, 12, or 13, may have come into the affiliated group since 1919, a questionnaire, Form 819, is required for the entire group for the taxable period.

APPENDIX C

Form 1120, Corporation Income and Profits Tax Return (used in the July 16, 1921 return) (p. 3):

Affiliations with other corporations (to be answered by every corporation).

11. Does the corporation own directly or control through closely affiliated interests or by a nominee or nominees over 50 percent of the outstanding voting capital stock of another corporation or of other corporations? ------

12. Is over 50 percent of your outstanding voting capital stock owned by another corporation or by two or more corporations that are affiliated? ------

13. Is over 50 percent of your outstanding voting capital stock as well as over 50 percent of the outstanding voting capital stock of another corporation or of other corporations owned or controlled by the same individual or partnership or by the same individuals or partnerships? ------

14. If the answer to questions 11, 12, and 13, or to any of them, is "yes", answer the following:

(a) Did the corporation file Affiliated Corporations Questionnaire, Form 819, for 1917 or subsequent taxable years? Answer "Yes" or "No." *Yes.* If the answer to this question is "yes", a questionnaire is not required, except under the circumstances described in question (b). If the answer to this question is "no", and the answer to ques-

tions 11, 12, and 13, or to any of them, is "yes", procure from the Collector of Internal Revenue for your district Form 819, which shall be filled out and filed as a part of this return. If the answer to this question is "no", question (b) need not be answered.

(b) Did substantially the same conditions, as are set out in the questionnaire filed for 1919 or prior years, obtain during the entire taxable period 1920? Answer "Yes" or "No." *Yes.* If the answer to this question is "no", a statement, setting forth the particulars in which the situation has changed, should be attached to and made a part of this return. If there have been substantial changes in stockholdings, a complete schedule of such changes should be submitted in the form prescribed in Tables 3 and 6 of the questionnaire. If there are companies other than those covered by the questionnaire for 1919 or prior years which, applying the tests contained in questions 11, 12, or 13, may have come into the affiliated group since 1919, a questionnaire, Form 819, is required for the entire group for the taxable period.

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